

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

RECEIVED

MAY - 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of)
)
Policies and Rules Concerning)
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

To: Chief, Mass Media Bureau

COMMENTS

Mace J. Rosenstein
Michelle Shanahan

HOGAN & HARTSON
Columbia Square
555 13th Street N.W.
Washington, D. C. 20004-1109
(202) 637-5600

On Behalf of 36 Television Stations

May 7, 1993

No. of Copies rec'd
List A B C D E

074

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	-i-
COMMENTS.....	1
I. THE COMMISSION SHOULD REMAIN FAITHFUL TO CONGRESSIONAL INTENT AND PROTECT THE QUALITY OF CHILDREN'S TELEVISION BY ALLOWING BROADCASTERS TO EXERCISE REASONABLE AND GOOD-FAITH DISCRETION IN THEIR PROGRAMMING DECISIONS.....	3
II. THE SUGGESTIONS OFFERED IN THE COMMISSION'S NOTICE OF INQUIRY MAY ACTUALLY REDUCE THE LEVEL OF QUALITY PROGRAMMING AVAILABLE TO CHILDREN	5
A. Minimum Quantitative Standards Would Force Broadcasters To Elevate Quantity Over Quality of Programming.....	6
B. An Emphasis On Standard-Length Programming Would Stifle Innovative and Effective Forms of Children's Programming.....	9
C. An Effort To Divorce Entertainment From Educational Programming Would Alienate The Children Intended To Benefit From The Programming.....	12
III. CONCLUSION.....	14

SUMMARY

In this Notice of Inquiry, the Commission has
suggested several revisions to the children's programming rules.

would force stations to withdraw expensive high-quality programs and halt innovative, local productions so that they can afford a sufficient number of programs. They would have a chilling effect on the creation of short-segment programs which grab children's attention and provide opportunities for local production and experimentation. And by requiring that stations rely upon "primarily educational" programming to satisfy their

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

In The Matter Of)	MM Docket No. 93-48
)	
Policies and Rules Concerning)	
Children's Television Programming)	
)	
Revision of Programming Policies)	
for Television Broadcast Stations)	

To: Chief, Mass Media Bureau

COMMENTS

The television stations listed in Attachment A (the "Stations") submit these Comments in response to the Commission's Notice of Inquiry, Policies and Rules Concerning Children's Television Programming (rel. Mar. 2, 1993). In the Notice of Inquiry, the Commission asked whether, and to what extent, its children's programming rules should be revised to clarify the amount and type of programming required to meet the "educational and informational" needs of children under the Children's Television Act ("CTA").

The Stations are sensitive to the Commission's concern that some broadcasters may have claimed that programs which are not remotely educational or informational fulfill their children's programming obligations. But the Stations urge the Commission not to overreact to these scattered abuses by imposing arbitrary standards upon all broadcasters. Such standards may ease the Commission's regulatory burden, but will fail to serve the interests of children, or the public interest underlying the CTA.

To carry out the CTA's goals, the Commission must
assure that broadcasters air high quality programming which

needs." 3/ Nevertheless, the Commission now suggests substituting its own judgment for that of broadcasters regarding the appropriate mix of children's programming. 4/

The Commission lacks the first-hand knowledge of individual communities necessary to determine the appropriate amounts and types of children's educational programming. Broadcasters, on the other hand, know what type, quantity and length of programming will spark the interest of the children in their communities. They are also familiar with the children's programming offered by other stations in the community and with the special nonbroadcast efforts which will enhance their existing children's programming. 5/ Utilizing this expertise within the parameters of the CTA and current regulations, broadcasters will allocate their resources towards those programs which best serve the educational needs of child viewers. The suggested attempts to interfere with this discretion would, as discussed below, have the unintended

3/ Report and Order, Policies and Rules Concerning Children's Television Programming, 6 FCC Rcd 2111, 2114 (1991).

4/ Notice of Inquiry at 4-6.

5/ Nonbroadcast efforts to enhance the value of children's educational programming and efforts to produce or support another station's educational programming may contribute to the satisfaction of children's programming obligations. 47 C.F.R. § 73.520.

effect of reducing the overall quality of children's

programming

A. Minimum Children's Programming Standards Would
Force Broadcasters To Elevate Quantity Over
Quality of Programming

In its Notice of Inquiry, the Commission suggested
establishing a children's programming benchmark below which

Quantitative standards would force broadcasters to focus their attention and resources upon the amount of children's programming aired, yet the Commission has never found that sheer quantity of programming fulfills its traditional policy objectives. 11/ Indeed, "a station with programs addressing public issues and aired during high viewership time but amounting to only three percent of its weekly programming may be doing a superior job to a station airing six percent non-entertainment programming, little of which deals with community issues and which is broadcast when the audience is small." 12/

A mere increase in children's programming will not improve the overall educational value of that programming because there is no "direct nexus" between increased quantity and improved licensee performance. 13/ In reality, the burden of minimum programming requirements may have the consequence of undermining quality, as broadcasters are forced to abandon expensive, high-quality offerings in order to acquire enough

11/ Report and Order, Revision of Programming and Commercialization Policies, 98 F.C.C.2d 1076, 1090 (1984).

12/ Id. n.49; accord Office of Communications of the United Church of Christ v. FCC, 707 F.2d 1413, 1433 (D.C. Cir. 1983).

13/ Revision of Programming and Commercialization Policies, 98 F.C.C.2d at 1076.

programming with their limited resources to meet the minimum standards. The burden may also result in bland uniformity by causing broadcasters to sacrifice expensive local programming efforts for less expensive nationally syndicated programs. Ultimately, the elimination of quality programming in favor of greater quantity may result in inferior programming, as the Commission previously recognized in its 1984 Revision of Programming and Commercialization Policies. 14/

Not only would quantitative requirements sacrifice the quality of children's programming, but they would infringe unnecessarily upon journalistic freedom. 15/ Broadcasters must be given the opportunity to exercise discretion as to the precise amount of children's programming they offer, as long as they exercise this discretion reasonably and in good faith.

The Commission cannot escape these objections by claiming that any minimum standards it establishes will not serve as a litmus test for renewal or rejection, but will only signal the need for more intense scrutiny of renewal applications. 16/ The Commission itself recognizes the tendency of processing guidelines to assume the force of rules

14/ FCC Report and Order, 49 FR 10000 (Feb. 22, 1984).

in the eyes of broadcasters. 17/ Logic also confirms this tendency; no broadcaster would voluntarily subject its renewal application to intense scrutiny, no matter how exceptional its children's programming.

B. An Emphasis On Standard-Length Programming Will Stifle Innovative and Effective Forms of Educational Programming

In its Notice of Inquiry, the Commission suggested that broadcasters place primary reliance upon standard-length programming rather than shorter-segment programming to fulfill their children's programming obligations. 18/ Like the suggestion to impose minimum quantity requirements, this approach elevates the quantity of programming -- its duration -- over its quality. It also supplants the editorial discretion of the broadcaster with the Commission's judgment in a realm which is central to the broadcaster's function and expertise. While the Commission's suggestion seeks to deemphasize short-segment programming, it may have a chilling

17/ Id. at 5-6; Formulation of Policies Relating to the Broadcasting Renewal Applicant, 66 F.C.C.2d at 427 (explaining that guidelines for determining substantial performance in renewal proceedings are likely to be adopted as minimum requirements by all licensees).

18/ Notice of Inquiry at 4-5. At present, the Commission simply requires licensees to offer "some" standard-length children's programming. Memorandum Opinion and Order, Children's Television Programming, 6 FCC Rcd 5093 (1991).

effect upon the majority of short-segment programs, because

~~headquarters now fear that giving any such program~~

children. A local production by one of the Stations provides a pointed example of successful short-segment programming. In addition to an already-full plate of educational children's programming, the station produces brief newscasts which paint current events in a fun and interesting light for children. The station airs these newscasts on Saturday mornings when many children tune into the station. The station intends to continue producing these valuable newscasts, but it may lack the resources to do so if it is forced to carry a significant portion of standard-length programming. This effort exemplifies the type of programming that the CTA sought to cultivate -- it captures the attention of a large number of children and informs them in the process. The Commission cannot contend honestly that this type of programming fails to satisfy a broadcaster's obligations under the CTA or that, at best, it must be relegated to "secondary" status.

The Commission must not ignore logic, the experience of broadcasters, and its own prior findings by demanding primary reliance upon standard-length programming. While easing the process of "proving" compliance with the CTA, such an emphasis will crush innovation, discourage local programming and, ultimately, disinterest children. Broadcasters must be able to exercise their discretion as to the appropriate length of the children's programming they air, provided they offer

"some" standard-length programming in keeping with current requirements. 20/

C. An Effort To Divorce Entertainment From Educational Programming Will Alienate The Children Intended To Benefit From The Programming

Finally, the Commission has suggested that the primary objective of children's programming should be educational and informational, while entertainment should be only a secondary and implicit goal. 21/ The placement of primary reliance upon educational and informational programming may have a chilling effect upon any attempts to add entertainment value to educational programming. Programmers may err on the side of limited entertainment to ensure that the FCC considers their programs "primarily educational." However, broadcasters must retain the entertainment aspects of children's television if they want to air programming which children actually watch. Children simply have too many choices available to endure

programming which fails to entertain them. While efforts to

children will be frustrated if no children watch the resulting programming.

Moreover, it is impossible to dichotomize education and entertainment as the Commission has suggested. Congress envisioned a fusion of education and entertainment in television, finding that "television can assist children to learn important information, skills, values and behaviors, while entertaining them and exciting their curiosity to learn about the world around them." 22/ The methods of educating children are infinite; entertainment may serve as one of many tools of education. Thus, "primarily-educational" children's programming, like the term "children's programming" itself, eludes definition, because "no one can set boundaries to the fantasy of a child's world." 23/ Yet the Commission suggests imposing precisely such arbitrary boundaries on educational children's programming by excluding entertainment programming from the definition. This would limit the potential of television as an educational tool and frustrate the goals of the CTA. Therefore, the Stations urge the Commission to view

22/ Pub. L. No. 101-437 § 101 (emphasis added). Congress suggested that any programming which serves children's cognitive/intellectual or social/emotional needs would qualify as educational programming. Notice of Inquiry at 2.

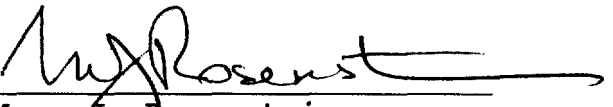
23/ National Ass'n of Indep. Producers & Distribs. v. FCC, 516 F.2d 526, 539 (2d Cir. 1975).

educational programming broadly and leave decisions regarding the precise types of educational children's programming to be aimed to the good faith and reasonable discretion of

and thus to discard consideration of rules which would impose programming benchmarks, emphasize standard-length programming and encourage programming in which entertainment is only the secondary goal.

Respectfully submitted,

HOGAN & HARTSON

By 
Mace J. Rosenstein
Michelle M. Shanahan

Attorneys for the 36
Stations Listed in
Attachment A

May 7, 1993

8356S/6451o

ATTACHMENT A

KBSD-TV	Ensign, KS
KBSH-TV	Hays, KS
KBSL-TV	Goodland, KS
KEYT-TV	Santa Barbara, CA
KFYR-TV	Bismarck, ND
KGAN(TV)	Cedar Rapids, IA
KMOT-TV	Minot, ND
KOVR-TV	Stockton, CA
KQCD-TV	Dickinson, ND
KSTS(TV)	San Jose, CA
KTMD(TV)	Galveston, TX
KTVO-TV	Kirksville, MO
KUMV-TV	Williston, ND
KVDA(TV)	San Antonio, TX
KVEA(TV)	Corona, CA
KWCH-TV	Hutchison, KA
WATM-TV	Altoona, PA
WAXA-TV	Anderson, SC
WCFT-TV	Tuscaloosa, AL
WDAM-TV	Laurel, MS
WETM-TV	Elmira, NY
WGGB-TV	Springfield, MA
WGME-TV	Portland, ME
WHTM-TV	Harrisburg, PA
WICS(TV)	Springfield, IL
WKAQ-TV	San Juan, PR
WLOS(TV)	Asheville, NC
WUHC-TV	Marquette, MI